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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 1319

HOMER BROOKS,
Petitioner,

v.

REVEREND JOHN RENTON HUNTER, ET AL.,
Respondents.

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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QUESTIONS PRESENTED

(1) Whether or not courts below erred in dismissing Petitioner's complaint for violating Rule 8 (e) (1) of the Federal Rules of Civil Procedure.

STATUTES INVOLVED

USCA Title 28 $8 (e) (1) page 339

"Each averment of a pleading shall be simple, concise, and direct. . . ."

STATEMENT OF CASE

The Petitioner, a member of the bar appearing in proper person, filed a twenty-six page complaint (JA 5 thru 35) on May 4, 1966. On July 29, 1966, the District Court granted the Respondent's motion to dismiss which was based on the provisions of FRCP 8 (e) (1). The complaint was dismissed without prejudice. The action of the District Court was affirmed by the Court of Appeals for the District of Columbia.

ARGUMENT

Petitioner's complaint was twenty-six pages long, and in flagrant violation of Rule 8 (e) (1) of The Federal Rules of Civil Procedure.

The complaint contained substantial evidentiary, irrelevant, and redundant material.

It contained sections such as "Points and Authorities," "Brief in Support," "Argument," and "Question Presented," not normally found in a complaint. Responsive pleading would have been an impossible task.

The lower court dismissed the complaint, and rightly so. Cases in support of this action are many. In *Renshaw v. Renshaw*, 80 U.S. App. D.C. 390, 153 F.2d 310, the court said in dismissing a fourteen page complaint:

> "The dismissal, without prejudice, of a Complaint on grounds that its averments are not simple, concise, and direct is largely within the discretion of the trial court and the Appellate Court will not disturb action of Trial Court in the absence of clear error".

In *Burns v. Spiller*, 4 F.R.D. 299, *affirmed* 82 U.S. App. D.C. 91, 161 F.2d 377, the Court held that the Complaint consisting of 32 legal size typewritten pages, a large part of which was made up of evidentiary matter, was in violation of the Federal Rules requiring pleadings setting forth a claim for relief, to contain a short and plain statement of claim.

Also, in *McCann v. Clark,* 89 U.S. App. D.C. 166, 191 F.2d 476,

> "The pleading in the case before us does not contain a short and plain statement of claims and its averments are neither simple, concise nor direct. It is so flagrantly violative of Rule 8 that it should have been dismissed on that ground if no other."

The form of Petitioner's Complaint is clearly a flagrant violation of Rule 8 (e) (1). When such violation occurs, the courts may in their discretion dismiss the Complaint as they have done in the instant case.

The Petitioner also alleges that he has been denied his day in court, because he was not given an opportunity to amend his complaint. This is not so.

The complaint was dismissed without prejudice. Whereupon, the Petitioner could have made a motion for leave to file an amended complaint, or filed an entirely new complaint. He failed to take either course of action, choosing to appeal the court's decision.

It is not the duty of the court to inform the Petitioner of his legal rights. The Petitioner's own failure to take the proper and necessary legal steps is the cause of his failure to receive a trial on the merits.

The Petitioner has not been denied any of his constitutional rights. He can still file a new complaint. The Respondent is at a loss as to why he has not done this before, rather than appealing the decision of the District Court.

Petitioner's brief is just another example of his inability to follow the proper rules of pleading. He has gone off on a tangent and discussed issues which are not properly before this Court. No decision was ever rendered on the merits of this case. Therefore, the only question in issue is the action of the lower court in dismissing the complaint. Such action was proper, and should not be disturbed.

CONCLUSION

For the foregoing reasons, it is submitted that no error was committed by the courts below. Accordingly, the Petitioner's Writ of Certiorari should be denied.

Respectfully Submitted,

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